

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 30TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

**H.R.R.P.NO.782/1994**

1.Dr.M.N.Janakiram,  
s/o late Neeli  
Muniramaiah,  
60 years,  
No.3, Professor's Quarters,  
Gnanabharathi,  
Bangalore University,  
Bangalore-56.

Petitioner

2. M.Ashoka Raju,  
s/o late Neeli  
Muniramaiah,  
42 years,  
No.43, Sanjeevappa Lane  
Bangalore-2.

(By Sri G.Gangireddy,  
Sri C.B.Siddaiah and  
Sri V.S.Gunjal)

-vs-

1. Krishna Murthy,  
s/o late Nanjundarama  
setty, 37 years,  
No.23, Sanjeevappa Lane,  
Bangalore-2.

2. Shankaranarayana Setty A.L.,  
s/o late Lakshminarayana  
Setty, No.6,  
Bakshi Gulam Mohidin Saheb,  
Mekhri Cross Road,  
Bangalore-2.

Respondents

(By Sri A.S.Bopanna for R.1,  
Sri B.B. Mandappa for R.2)

This revision petition is filed under Section 50 of the Karnataka Rent Control Act against the order dated 5.2.1994 passed in HRC No.837/92 on the file of the Chief Judge of Small Causes, Bangalore.

This revision petition coming on for hearing this day, the court made the following:

**ORDER**

Petitioners herein who were brothers filed an eviction petition against the respondents-tenants herein on the ground that the premises in occupation of them namely a shop having a dimension of 8' x 16' situate at No.53, Sanjeevappa Lane, Avenue Road Cross, Bangalore-2, is required for the purpose of running a consultancy in Engineering as Petitioner No.1 at the time of filing of the petition was due to retire shortly.

This petition was resisted by the respondents herein denying the requirement as neither reasonable nor bonafide. Respondents also contended that the first respondent was not the tenant it was only the second respondent who was the tenant. Subsequent to the filing of the petition the petitioners had come <sup>into</sup> ~~into~~ possession

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of three vacant shops<sup>1</sup> by not occupying the same their bonafides are taken away. The learned Judge of the Small Causes in appreciation of the evidence led by the parties dismissed the eviction petition.

Aggrieved by the said order this revision petition has been filed by the petitioners herein.

Sri Gangireddy, learned counsel appearing for the petitioners assailed the order of the learned Judge on the ground that the learned Judge having not disbelieved the need of the petitioners to start a consultancy office committed an error of record in thinking that the petitioners came into possession of an alternative premises. He therefore contended that the order is liable to be set aside. Per contra the learned counsel appearing for the second respondent defended the order of the learned Judge.

I have gone through the order of the learned Judge as well as the evidence on record. Admittedly petitioner No.1 is a Doctorate in Engineering and was working as an Engineer in

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the University College at Bangalore. At the time he filed this petition he was due to retire, it has now transpired that he has already retired. He has deposed that he wants to open "Civil Engineering Consultancy Service". According to him other than the petition schedule premises there is no other premises for opening the office. Petitioner No.2 his brother also who has been examined as PW.2 corroborated his evidence. This evidence has not been challenged by the tenant. Respondent No.2 who has been examined as RW.1 has not even stated that the said requirement is not genuine. The learned Judge also has not disbelieved the intention of the petitioner to start a consultancy office. The only ground on which the learned Judge rejected the eviction petition is, subsequent to the eviction petition the petitioner has come into occupation of three rooms. PW.2 has given the dimensions of two rooms which measures 3' x 8' and 4' x 8'. By no stretch of imagination this can be held to be sufficient to run the consultancy office. In so far as the finding of the learned Judge that one more room which was let out to Rassol Khan fell vacant and the petitioner has not chosen to occupy the same

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is concerned no where in the evidence either the petitioner or the respondent has disclosed that such a room fell vacant. Even if available about its suitability, diemsnion etc. is not given. Unless there is evidence that the landlord has come into possession of a premises subsequent to the filing of the eviction petition which can take care of his need it cannot be said that coming into possession of a premises will automatically defeat his requirement. There is no evidence whatsoever to show that the premises in occupation of Rasool Khan was suitable in any way to start the consultancy office. This vital aspect has been totally lost sight of by the learned Judge, <sup>when</sup> The learned Judge proceeds to say a premises occupied by Rasool Khan fell vacant and the petitioner having not occupied, his bonafides are defeated. Therefore the finding of the learned Judge cannot be sustained.

In so far as the comparative hardship is concerned the tenant is a man of affordable means who is having his own premises 400 yards away from the premises and the petitioners have no other premises other than the schedule premises.

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Therefore it has to be held that the petitioners suffer greater hardship than the respondent. The learned Judge has held that having regard to the nature of the business carried on by the tenant as well as the dimension of the schedule premises partial eviction is not feasible.

For the reasons stated above, this revision petition is allowed. The order of the learned Judge of Small Causes is set aside. Consequently the eviction petition filed by the petitioners is allowed.

At this stage the learned counsel appearing for the 2nd respondent submitted that the respondent has been carrying on a Fair Price Depot and there are a number of card holders. Hence he prayed for three years time to quit and deliver vacant possession.

Sri Gangireddy and Sri Gunjal learned counsel appearing for the landlords very fairly conceded for granting two years time. Having regard to the facts and circumstances of the case

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two and a half years time is granted to the tenant to quit and deliver vacant possession of the premises subject to the following conditions:

1. That the 2nd respondent shall file an affidavit undertaking to voluntarily vacate the premises.

2. The affidavit shall be filed within three weeks from today after serving a copy on the other side.

3. That he shall not sub-let or sub-lease the premises.

4. That he shall pay the monthly rents regularly as and when it falls due without default.

Sd/-  
JUDGE

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